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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 NOREEN CAIAZZA, ex rel. EARL CAIAZZA, )  
9 )

10 Plaintiff, )

11 vs. )

2:08-cv-00604-RCJ-GWF

12 DESERT REGIONAL CENTER et al., )

13 Defendants. )  
14

**ORDER**

15 This case arises out of injuries Earl Caiazza received while in the care of Defendants. Noreen  
16 Caiazza, Earl's legal guardian, sued Defendants in state court on two causes of action: (1)  
17 Negligence; and (2) Civil Rights Violations Pursuant to 42 U.S.C. § 1983. The Court dismissed the  
18 federal cause of action because no Defendant was a "person" under the meaning of § 1983. (*See*  
19 *Order 6:19–20, Mar. 15, 2010, ECF No. 34 (citing Will v. Mich Dep't of State Police, 491 U.S. 58,*  
20 *66 (1989))*). With no federal claims remaining, and no diversity between the parties, the Court then  
21 remanded the case to the state court in its discretion under 28 U.S.C. § 1367(c).

22 Plaintiff has moved for the Court to reconsider because she "received no notice of change  
23 from Judge Foley's chambers on 5/12/10 to Judge Jones court on March 3/22/10. They dismissed  
24 the case due to Plaintiff not being present." (Mot. 1, May 12, 2010, ECF No. 35). This is the entirety  
25 of the motion. The present disposition of the case is not due to Plaintiff's absence at any hearing or

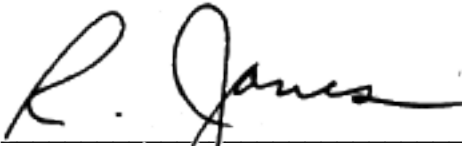
1 conference. The rescheduling Plaintiff complains of appears to be the rescheduling of a settlement  
2 conference before the magistrate judge from March 22, 2010 to May 12, 2010.

3 Because the present motion to reconsider was filed over twenty-eight days after the order,  
4 it must be considered under Rule 60(b) as opposed to Rule 59(e), and none of the subsections of Rule  
5 60(b) apply. Plaintiff only appears to allege surprise pursuant to Rule 60(b)(1). As Defendants note,  
6 Plaintiff had notice of the motion for summary judgment via mailing by Defendants' counsel.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that Defendant's Motion to Reconsider (ECF No. 35) is  
9 DENIED.

10 Dated: This 14th of September, 2010.

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15 ROBERT C. JONES  
16 United States District Judge  
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